



29 October 2007

Review of the Codes of Practice  
Electricity and Gas Complaints Commission  
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To whom it may concern,

## **Review of the Electricity Consumer Code of Practice and Gas Consumer Code of Practice**

### **Introduction**

1. Thank you for the opportunity to submit on the Electricity and Gas Complaints Commission's (EGCC) consultation paper "*Review of the Electricity Consumer Code of Practice and Gas Consumer Code of Practice*", October 2007.
2. No part of our submission is confidential and we are happy for it to be publicly released.
3. Responses to the EGCC's specific questions are contained in the Appendix to this submission.

### **Mighty River Power's comments**

4. Mighty River Power is supportive of both the Electricity Consumer Code of Practice and the Gas Consumer Code of Practice.
5. We consider that the Codes are generally robust. Most of our suggested changes, as reflected in the responses to questions 3 and 4, are relatively minor. The exceptions relate to some of the requirements for Retail Contracts with customers, and our obligations in relation to network service delivery.
6. On the first of these concerns, the Codes not only prescribe Retailers' obligations to their customers, which is appropriate, but also dictate that these obligations be met through the specification of our Retail Contracts (clause 3.1(d)). This is then reinforced by the Electricity Commission's effective adoption of the Electricity Code in its Model Contract. The issue we have is that, for some parts of the Codes, the requirements need not be reflected in the Retail Contract in order for Retailers to comply. For example, it is not necessary for Retail Contracts to specify that Retailers will notify customers of the reasons for any price changes. Retailers can and do meet this requirement regardless of what is said in the Retail Contracts. Similarly, is the Retail Contract really the best place to warn customers to protect sensitive appliances from voltage spikes (clause 12.4)?

7. Mighty River Power **recommends** that:
  - a. Clause 3.1(d) of the Codes be deleted; and
  - b. The EGCC advise the Electricity Commission that it does not consider it necessary for the Electricity Code to be reflected in the Model Contracts to ensure compliance with the Code.
8. The second of the concerns is the most substantive.
9. Clause 12.3 (bullet 3) specifies that “quality of service standards **must** ... Require that equipment used in the provision of Line Function Services will be monitored and maintained in line with good industry practice prevailing in New Zealand.” Electricity and gas retailers, unless vertically-integrated with Lines Businesses, have no control over the service quality for Line Function Services.
10. Mighty River Power is cognisant that in normal commercial settings the seller of a good or service is responsible for ensuring that it is reliable, meets the Consumer Guarantees Act etc. Noel Leemings, for example, is responsible to its customers for Sony products that it sells. This is appropriate. Noel Leemings, in turn, will have back-to-back guarantees from Sony for the Sony products they retail.
11. The circumstances Electricity and Gas Retailers are in, while not dissimilar to those described above, are critically different in that Lines Businesses (electricity and gas pipes) are natural monopolies. Because they are natural monopolies, and we cannot get line services from alternative suppliers, we have no real ability to negotiate such terms. Lines Businesses, in turn, have no incentive to agree such terms as they would simply add to their costs without necessarily resulting in additional revenues.<sup>1</sup>
12. Another difference that arises in some circumstances – such as the provision of electricity lines services by Vector – is that the Lines Businesses directly provides the line services to consumers i.e. the Retailer does not have an interposed use-of-system agreement with the Lines Business. This situation would be more akin to a customer purchasing a Sony DVD player direct from Sony, buying a DVD from Noel Leeming, and Noel Leeming being responsible for Sony’s DVD player.
13. This leaves Retailers in the invidious position where they are liable for failure of Lines Businesses to provide satisfactory service, even though they have no control over Lines Businesses’ service quality, while lines businesses are insulated from any such liability. We consider this to be entirely inappropriate. Mighty River Power **recommends** that the obligations on Retailers for Lines Businesses’ network service quality should either be

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<sup>1</sup> Particularly where the Lines Business is operating under price control or, in the case of Electricity Lines Businesses, the thresholds regime under Part 4A of the Commerce Act.

If Lines Businesses agreed to indemnify retailers for third party liabilities that they may cause their costs would increase but they would not necessarily receive any offsetting increase in the prices they could set (meaning lower profits). This is analogous to the incentive that regulated businesses have under price cap regulation to improve profitability through service degradation.

removed (i.e. clause 12.3(bullet 3) be deleted), or an obligation imposed on Lines Businesses to provide Retailers with back-to-back protection against any such liabilities.<sup>2</sup>

### Concluding remarks

14. If you have any queries regarding this submission, please do not hesitate to contact me (on 09 308 8259 or [robert.allen@mightyriver.co.nz](mailto:robert.allen@mightyriver.co.nz) or Richard De Luca, Mercury Energy's Retail Operations Manager (on 09 589 3055 or [Richard.DeLuca@mercury.co.nz](mailto:Richard.DeLuca@mercury.co.nz)).

Yours sincerely,

Robert Allen

Regulatory Manager

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<sup>2</sup> We have made the same point to the Electricity Commission in relation to the benchmark agreement regime for electricity transmission, and Model Use-of-System Agreements for electricity distribution. It is worth noting that the Ministry of Economic Development recently introduced Regulations for connection of distributed generation to Electricity Lines Businesses' networks under which each party must indemnify the other party for third party claims that are largely attributable to their own acts or omissions. Regulation 25 of the [Electricity Governance \(Connection of Distributed Generation\) Regulations 2007](#) states *"Each party (the indemnifying party) must indemnify the other for damages claimed by third parties to the extent that the loss is caused by a breach of these regulated terms by the indemnifying party, where the loss is materially caused by any action or omission of the indemnifying party."*

## Appendix: Responses to the EGCC's questions

Question	Relevant Clause in Code	Comment Where possible, please include details about the number and source of complaints that have lead to the concern.
<p>Q1. Do we need the Electricity and/ Gas Codes? If so, how do you see them working with guidelines that are created by the Electricity Commission and Gas Industry Company? For example, the electricity model retail contract.</p>		<p>Mighty River Power supports the Electricity and Gas Codes.</p> <p>We note that there is overlap between the Codes and various Guidelines, such as the Electricity Commissions Low Income &amp; Vulnerable Consumer Guidelines, and the Retail Model Contract.</p> <p>We do not believe that these overlaps are actually necessary.</p> <p>The Retail Model Contract, for example, is not the vehicle that should be used to ensure compliance. Many aspects of the Code do not need to be reflected in the Model Contract in order for Retailers to comply with the Code. For instance, the requirement to notify a reason with price changes can be complied with without having to be explicitly stated in a Consumer Contract. It is only an issue when the two have conflicting statements.</p> <p>The Low Income and Vulnerable Consumer Guidelines cover off in detail requirements surrounding disconnection and payment options. Accepting that the Guidelines set out the minimum good practise for the industry, the Code should simply refer to the Guidelines, or remain silent, so there is no conflict.</p> <p>Similar comments can be made about the references to the Consumer Guarantees Act and Privacy Act.</p>
<p>Q2. Are the Electricity and/ Gas Codes working well?</p>		<p>Yes.</p>
<p>Q3. Are there any clauses in the Codes that promise more than can reasonably be delivered?</p>	<p>3.1(d)</p>	<p>This clause implies the Consumer Contract is the vehicle that should be used to ensure compliance, but many aspects of the Code do not need to be reflected in the Consumer Contract in order to comply with the Code (see the example given in question 1).</p>

Question	Relevant Clause in Code	Comment Where possible, please include details about the number and source of complaints that have lead to the concern.
	12.3(bullet 3)	<p>The clause also implies that all consumer contracts <u>should</u> exceed the minimums of good industry practice.</p> <p>In a competitive environment consumers, while being entitled to a minimum standard of service that is already set at “good”, will make their own value choices about levels of service and what they have to pay to get this. Similarly, Retailers competing for customers will offer contracts that exceed the minimums where consumers see value in this.</p> <p>The clause should be simplified to:  <i>The Code sets out certain minimum standards of behaviour of good industry practice that electricity retailers should meet.</i></p> <p>This clause suggests electricity retailers have some kind of control or responsibility over electricity lines business (ELB) service quality. For instance, if an ELB’s load control system is prone to fault we, as an electricity retailer, have no ability to require that it is “maintained in line with good industry practice”. If the market for electricity lines services was competitive we could take supply from an ELB that is willing to provide service quality guarantees that mirror those in the Code. However, ELB’s natural monopoly position means that we have been unable to obtain such arrangements.</p> <p>What this means is that electricity retailers are exposed to (financial) risks from poor ELB service quality that we have no control over, while the ELB is exposed to no such risk. This is entirely inappropriate.</p> <p>If the EGCC prefers to keep the ELB related service quality obligations in the Code we suggest that the EGCC seek to get the Electricity Commission to require ELBs to provide back-to-</p>

Question	Relevant Clause in Code	Comment Where possible, please include details about the number and source of complaints that have led to the concern.
		back obligations to retailers.
Q4. Are there any clauses in the Codes that are vague or ambiguous?	12.3  23.7	<p><b>There is plenty of scope for disagreement, and differing interpretations, as to the requirement that service quality must “Be no less than good industry practice prevailing in New Zealand”.</b></p> <p>The issue here is that the term “acceptance” can be more broadly interpreted as being a confirming action from the customer. This is simply not practicable to obtain in mass markets. Effectively we send out the terms and conditions and the customer becomes bound by these unless we agree otherwise or the customer chooses another Retailer. On the basis that “acceptance” is satisfied passively then we have no difficulty with this clause.</p>
Q5. Should complaints handling by the Electricity and Gas Complaints Commissioner always be free to consumers? Are there some circumstances where a charge is appropriate such as where a meter undergoes testing or voltage variation is recorded?		<p>We do not feel a general imposition of fees is necessary or desired but it may be useful for the Commission to have a right to charge for cost recovery in circumstances where claims are clearly unmerited (e.g. frivolous and vexatious claims) as a means for the EGCC to responsibly manage costs.</p> <p>In the stated example of meter testing, for instance, we do not charge customers for this service when a claim is warranted and reserve the right to charge in some circumstances when the claim is unwarranted.</p>
Q6. Would it be useful if the Codes included an explanation of the purpose of some or all of the clauses? If so, which ones in particular?		No. This may just broaden the range of interpretations and lead to more disagreement and confusion.
Q7. Are there examples of changed industry duties and practice that should be incorporated into the Electricity and/ Gas Codes?		There are a number of other industry regulatory initiatives in progress (for instance smart metering and load control). The outcomes of these should be taken into account for any possible changes.
Q8. What other changes should be made to the Codes? Please provide reasons why you think		

Question	Relevant Clause in Code	Comment Where possible, please include details about the number and source of complaints that have lead to the concern.
the changes should be made.		
Q9. Are there any other matters that you wish to raise?		
Q10. Please tell us how you first became aware of the Codes and the associated issues.		Industry participant.
Q11. How do you think consumers usually become aware of the Codes? Do you have any specific suggestions as to how consumer awareness of the codes can be broadened?		Membership of the EGCC requires retailers to comply with the code and to reflect the requirements in their Terms and Conditions. Offering the codes to consumers on a stand-alone basis will inevitably lead to issues of precedence and therefore just contribute confusion with little or no enhancement of rights.